

1 JEFFREY S. KOPP, CA Bar No. 185783
jkopp@foley.com
2 **FOLEY & LARDNER LLP**
555 SOUTH FLOWER STREET, SUITE 3300
3 LOS ANGELES, CA 90071-2418
TELEPHONE: 213.972.4500
4 FACSIMILE: 213.486.0065

5 Attorneys for Petitioner Nexteer
Automotive Corporation
6

7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10

11 IN RE: DMCA SECTION 512(H)
SUBPOENA TO GITHUB, INC.

12 MISC. ACTION NO: _____
13

14 **DECLARATION OF PETE KIOUSIS IN
SUPPORT OF PETITIONER NEXTEER
AUTOMOTIVE CORPORATION'S
REQUEST TO THE CLERK FOR ISSUANCE
OF A SUBPOENA TO GITHUB, INC.
PURSUANT TO 17 U.S.C. § 512(H), TO
IDENTIFY ALLEGED INFRINGER(S)**
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DECLARATION OF PETE KIOUSIS

I, Pete Kiousis, declare as follows:

1. I am the Assistant General Counsel and Chief IP Counsel at Nexteer Automotive Corporation (“Nexteer”). As part of my duties, I am responsible for monitoring and addressing infringement of copyrights owned by or assigned to Nexteer.

2. I am authorized to act on Nexteer's behalf. I submit this declaration in support of Nexteer's request for issuance of a subpoena to GitHub, Inc. ("GitHub") pursuant to the Digital Millennium Copyright Act ("DCMA"), 17 U.S.C. § 512(h) (the "DMCA Subpoena").

3. The purpose of Nexteer’s DMCA Subpoena is to identify the alleged infringer or infringers who posted Nexteer’s source code and source code assigned to Nexteer on systems operated by GitHub without Nexteer’s authorization, which postings infringe copyrights held by Nexteer (the “Infringing Content”). I have personal knowledge of the facts contained herein and, if called upon to do so, I could and would testify competently thereto.

4. On May 25, 2023, I submitted on behalf of Nexteer a DMCA notification, via GitHub's online DMCA notification form (which can be accessed on GitHub's website), identifying the Infringing Content on GitHub's systems and providing the information required by 17 U.S.C. § 512(c)(3)(A). Attached hereto as Exhibit 1 is a true and correct copy of the email reflecting the information I submitted through GitHub's online form, along with GitHub's response to the DMCA notification. I was authorized to act on behalf of Nexteer in submitting this DMCA notification.

5. Nexteer's DMCA Subpoena is sought to obtain the identity of an alleged infringer or infringers, and such information will only be used for the purpose of protecting Nexteer's rights under 17 U.S.C. §§ 100, et seq.

6. I directed my outside counsel, Foley & Lardner to send correspondence to GitHub to obtain the identity of those responsible for posting Nexteer's source code on GitHub and such correspondence was sent on June 5, 2023. GitHub responded the same day stating that it required a subpoena to obtain user information. Attached hereto as Exhibit 2 is a true and correct copy of this correspondence and GitHub's response.

7. I respectfully request that GitHub not provide advance notice to the infringer(s) before

1 responding to the subpoena.

2 I declare under penalty of perjury under the laws of the State of California and Michigan that the
3 foregoing is true and correct.

4 Executed on June 6, 2023 at Waterford, Michigan

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6 Pete Kiousis

7 Pete Kiousis

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EXHIBIT 1

From: GitHub Developer Support <developer@githubsupport.com>
Sent: Wednesday, May 31, 2023 10:47 AM
To: Pete Kiousis <pete.kiousis@nexteer.com>
Subject: [GitHub Support] - DMCA takedown notice

Please do not write below this line

Your request has been updated.

You can add a comment by replying to this email.



GitHub Trust & Safety (GitHub Support)

May 31, 2023, 2:47 PM UTC

Hi Pete,

Thanks for your question.

For the disabled repositories, we should be able to provide the daily fetch and page view numbers to give you some idea of the repositories' exposure. Note that fetches include `git clone`, `git fetch`, and `git pull`, but do not include ZIP downloads or API calls. In order to share any information beyond that, we would need to follow the appropriate legal process, which you can read about here:

<https://docs.github.com/en/site-policy/other-site-policies/guidelines-for-legal-requests-of-user-data>

Please also note that we can't guarantee the completeness of this data. We'll go ahead and pass your request along to our Technical Support team who may be able to provide the above mentioned data.

Please let us know if we can help in any other way.

Regards,

GitHub Trust & Safety



pete kiousis

May 31, 2023, 12:39 AM UTC

Thank you. We would like to find the person(s) who maliciously put ours and our suppliers highly confidential information on your website.

Is there any information you can provide on the users?

Pete Kiousis

Assistant General Counsel and Chief IP Counsel
Intellectual Property consulting by IPete
Cell: +1 248 563 8797



1272 Doris Road, Auburn Hills, MI 48326

United States

3900 E Holland Rd Saginaw, MI 48601-9494

United States

nexteer.com



GitHub Trust & Safety (GitHub Support)

May 30, 2023, 8:19 PM UTC

Hi pete,

Thanks for the requested information. The reported content has been disabled and the owners have been notified of the takedown. We will let you know if any of the users file a counter notice to have the content re-enabled.

Please let us know if you have any other questions.

Regards,
GitHub Trust & Safety



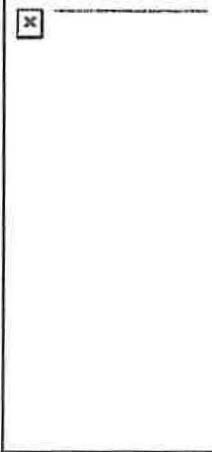
pete kiousis

May 25, 2023, 5:59 PM UTC

Yes, In addition to Arun's feedback...The resubmission of the DMCA notice should have the following corrections:

1. Where you referenced <https://github.com/ecuuser> it should be replaced with <https://github.com/ecuuse>
2. Where you referenced "GitHub - account-user1/RH850_Project: RH850-P1M Project for automotive" it shc
https://github.com/account-user1/RH850_Project

Here are screen shots that show the forks found:



And here are the links for the projects above:

Original Project: https://github.com/account-user1/RH850_Project

- Forks
 - https://github.com/317954897/RH850_Project
 - https://github.com/JesseLiang/RH850_Project
 - https://github.com/Just-Marco-Li/EPS_RH850_P1M
 - https://github.com/tigger-jake/EPS_RH850_P1M
 - https://github.com/kernal88/RH850_Project
 - https://github.com/simonwang0215/RH850_Project_DAVINCI

Original Project: https://github.com/ecuuser/TMS570_ECUForks

- Forks
 - https://github.com/Just-Marco-Li/EPS_TMS570
 - https://github.com/tigger-jake/EPS_TMS570

Original Project: <https://github.com/floweruser7/RH850-for-automotive>

- Forks
 - https://github.com/Just-Marco-Li/EPS_GM_RH850
 - <https://github.com/tigger-jake/RH850-for-automotive>

Pete Kiousis

Assistant General Counsel and Chief IP Counsel
Intellectual Property consulting by iPete
Cell: +1 248 563 8797



1272 Dorls Road, Auburn Hills, MI 48326
United States
3900 E Holland Rd Saginaw, MI 48601-9494
United States

nexteer.com



pete kiousis

May 25, 2023, 5:40 PM UTC

Here are screen shots that show the forks found:



And here are the links for the projects above:

Original Project: https://github.com/account-user1/RH850_Project

- Forks
 - https://github.com/317954897/RH850_Project
 - https://github.com/JesseLiang/RH850_Project
 - https://github.com/Just-Marco-Li/EPS_RH850_P1M
 - https://github.com/tigger-jake/EPS_RH850_P1M
 - https://github.com/kernal88/RH850_Project
 - https://github.com/simonwang0215/RH850_Project_DAVINCI

Original Project: https://github.com/ecuuser/TMS570_ECUForks

- Forks
 - https://github.com/Just-Marco-Li/EPS_TMS570
 - https://github.com/tigger-jake/EPS_TMS570

Original Project: <https://github.com/floweruser7/RH850-for-automotive>

- Forks
 - https://github.com/Just-Marco-Li/EPS_GM_RH850
 - <https://github.com/tigger-jake/RH850-for-automotive>

Pete Kiousis

Assistant General Counsel and Chief IP Counsel

Intellectual Property consulting by iPete

Cell: +1 248 563 8797



1272 Doris Road, Auburn Hills, MI 48326

United States

3900 E Holland Rd Saginaw, MI 48601-9494

United States

nexteer.com



GitHub Trust & Safety (GitHub Support)

May 25, 2023, 4:32 PM UTC

Hi pete,

Thank you for your report.

We are unable to determine where the allegedly infringing content is located. Please update your notice to include working links to the locations where the infringing content is located.

In the first case, you included a link to a user account. Please review the list of repositories owned by that account and revise your notice to include links to any repositories that contain your copyrighted content: <https://github.com/ecouser?tab=repositories>

In the last case, your notice does not include a link. If you intended to identify the following repository, please update your notice to include the full URL: https://github.com/account-user1/RH850_Project

Additionally, your notice indicates that the repositories you are reporting have been forked. Please note that GitHub will not automatically disable forks when disabling a parent repository unless you report them separately. If you believe that the forks are also infringing, please report those as well. You can see more about reporting forks in the following article: <https://docs.github.com/en/site-policy/content-removal-policies/dmca-takedown-policy#b-what-about-forks-or-whats-a-fork>

After you've revised your report to include the required details, please make sure to resend the entire DMCA takedown notice, and not only the corrected sections. You may reply to this email with your new DMCA notice, or file a new one through our [Copyright claims form](#). Once we've received your complete notice, we'll review it expeditiously.

Let us know if you have any questions.

Regards,
GitHub Trust & Safety



pete kiousis

May 25, 2023 10:08 AM UTC

****Are you the copyright holder or authorized to act on the copyright owner's behalf?****

Yes, I am authorized to act on the copyright owner's behalf.

****Are you submitting a revised DMCA notice after GitHub Trust & Safety requested you make changes to your original notice?****

No

****Does your claim involve content on GitHub or npm.js?****

GitHub

****Please describe the nature of your copyright ownership or authorization to act on the owner's behalf.****

Nexteer is a tier 1 automotive supplier. The code uploaded is code for our electronic power steering system include code from Vector, a supplier whose code and software we use to compile our code.

****Please provide a detailed description of the original copyrighted work that has allegedly been infringed. If possible, include a URL to where it is posted online.****

this is confidential code we do not even share with our customers. this is highly sensitive safety critical code used in our electronic power steering systems. Also includes code from Vector, one of our suppliers who assembles the code.

we fund three instances

<https://github.com/ecuuser>

https://github.com/Just-Marco-Li/EPS_GM_RH850

GitHub - account-user1/RH850_Project: RH850-P1M Project for automotive

also there are several forks that need to be removed as well

****What files should be taken down? Please provide URLs for each file, or if the entire repository, the repository's URL.****

we fund three instances

<https://github.com/ecuuser>

https://github.com/Just-Marco-Li/EPS_GM_RH850

GitHub - account-user1/RH850_Project: RH850-P1M Project for automotive

also there are several forks that need to be removed as well

****Do you claim to have any technological measures in place to control access to your copyrighted content? Please see our <a href="<https://docs.github.com/articles/guide-to-submitting-a-dmca-takedown-notice#complaints-about-anti-circumvention-technology>">Complaints about Anti-Circumvention Technology if you are unsure.****

Yes

****What technological measures do you have in place and how do they effectively control access to your copyrighted material?****

limited access to the code

****How is the accused project designed to circumvent your technological protection measures?****

we are investigating. we do not yet know who it is to know who it was circumvented.

****<a href="<https://docs.github.com/articles/dmca-takedown-policy#b-what-about-forks-or-whats-a-fork>">Have you searched for any forks of the allegedly infringing files or repositories? Each fork is a distinct repository and must be identified separately if you believe it is infringing and wish to have it taken down.****

yes, there are forks that need to be taken down. i will submit that info when i get it

****Is the work licensed under an open source license?****

No

****What would be the best solution for the alleged infringement?****

Reported content must be removed

****Do you have the alleged infringer's contact information? If so, please provide it.****

no. just found out from Vector. we are investigating

****I have a good faith belief that use of the copyrighted materials described above on the infringing web pages is not authorized by the copyright owner, or its agent, or the law.****

****I have taken fair use into consideration.****

****I swear, under penalty of perjury, that the information in this notification is accurate and that I am the copyright owner, or am authorized to act on behalf of the owner, of an exclusive right that is allegedly infringed.****

****I have read and understand GitHub's Guide to Submitting a DMCA Takedown Notice.****

****So that we can get back to you, please provide either your telephone number or physical address.****

Pete Kiousis

Assistant General Counsel and Chief IP Counsel

Intellectual Property consulting by iPete

Cell: +1 248 563 8797

pete.kiousis@nexteer.com

Nexteer Automotive Corporation

1272 Doris Road, Auburn Hills, MI 48326

United States

****Please type your full legal name below to sign this request.****

pete nick kiousis

This email is a service from GitHub Support.

Nexteer Automotive Confidentiality Statement:

The information transmitted by this email is intended only for the person or entity to which it is addressed. This email may contain proprietary, business-confidential and/or privileged material. If you are not the intended recipient of this message, be aware that any use, review, retransmission, distribution, reproduction or any action taken in reliance upon this message is strictly prohibited. If you received this in error, please contact the sender and delete the material from all computers.

[Privacy Policy](#) | [www.Nexteer.com](#) | [Contact us](#)

EXHIBIT 2



ATTORNEYS AT LAW

500 WOODWARD AVENUE, SUITE 2700
DETROIT, MI 48226-3489
313.234.7100 TEL
313.234.2800 FAX
WWW.FOLEY.COM

WRITER'S DIRECT LINE
313.234.7140
jkopp@foley.com

CLIENT/MATTER NUMBER
100719-0119

June 5, 2023

Via U.S. Certified Mail and E-Mail

GitHub, Inc.
c/o Corporation Service Company
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833-3505
Legal-support@github.com

Re: Nexteer Automotive Corporation

Dear Sir/Ma'am,

Our client, Nexteer Automotive Corporation ("Nexteer"), forwarded us correspondence between GitHub Developer Support and Nexteer's Assistant General Counsel and Chief IP Counsel, Pete Kiousis, in regard to the posting and takedown of three instances of Nexteer's proprietary source code on GitHub's publicly shared website. We appreciate GitHub's cooperation in removing the proprietary and highly confidential content from its website, as it has been and remains non-public information at all times.

We respectfully demand that GitHub identify the individual(s) responsible for posting any of the code taken down (previously posted in <https://github.com/ecuuser>, https://github.com/Just-Marco-Li/EPS_GM_RH850, and GitHub – account-user-1/RH850_Project: RH850-P1M Project for automotive). We would like to avoid the costs associated with filing a formal legal action but will do so through a subpoena should you decline to voluntarily provide us the requested information identifying those responsible for the disclosure of this information. We are sure that you can appreciate the sensitivity and potential damages resulting from an intentional and malicious disclosure of Nexteer's intellectual property and the identity of the offender(s) is crucial to preventing additional future disclosures.

AUSTIN
BOSTON
CHICAGO
DALLAS
DENVER

DETROIT
HOUSTON
JACKSONVILLE
LOS ANGELES
MADISON

MEXICO CITY
MIAMI
MILWAUKEE
NEW YORK
ORLANDO

SACRAMENTO
SALT LAKE CITY
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY

TALLAHASSEE
TAMPA
WASHINGTON, D.C.
BRUSSELS
TOKYO



June 5, 2023

Page 2

Please let us know by 5:00 pm ET on Wednesday, June 7, 2023, whether you will identify the responsible offender(s) so that we can protect Nexteer's rights accordingly. Of course, we expressly reserve all legal rights, and nothing herein shall be considered a waiver.

Regards,

A handwritten signature in black ink, appearing to read "Jeffrey S. Kopp".

Jeffrey S. Kopp

cc: Ms. Melanie Coppen (via email)

Kopp, Jeff

From: Legal Support <legal-support@github.com>
Sent: Monday, June 5, 2023 8:29 PM
To: Legal Support
Cc: Day, Renée; big10-Gal@github.com; Kopp, Jeff; Miller, Vanessa L.
Subject: Re: Nexteer Automotive Corporation

**** EXTERNAL EMAIL MESSAGE ****

Good evening Renee,

Thank you for reaching out. Per our policy, we require a subpoena to obtain user information. Also, we notify our users to give them an opportunity to object. Please see the following link for more information on our guidelines: <https://docs.github.com/en/site-policy/other-site-policies/guidelines-for-legal-requests-of-user-data>

Hope this answers any questions and makes are processes clear.

Best,
GitHub Staff

On Monday, June 5, 2023 at 7:40:53 AM UTC-7 Day, Renée wrote:

Please see the attached from Jeffrey Kopp in connection with the above matter. A hard copy will follow via U.S. Certified Mail.

Thank you.

Renée Day

Assistant

Foley & Lardner LLP

500 Woodward Avenue, Suite 2700

Detroit, MI 48226

[\(313\) 234-2773](tel:(313)234-2773)

rday@foley.com

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